U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9581705

Date: AUG. 4, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, the head of the oil and gas industry portfolio for a major investment bank, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirement of either receiving a major, internationally-recognized award or meeting at least three of the ten alternate evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director further found that the Petitioner did not establish that his entry would substantially benefit prospectively the United States.

On appeal, the Petitioner asserts that he meets at least three of the initial evidentiary criteria and is otherwise qualified for the requested classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is currently employed as "Director, Head of Asset Management & Portfolio, Oil and Gas" with [redacted] based in [redacted] Texas.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet six of the ten evidentiary criteria, summarized below:

- (i) Lesser nationally or internationally recognized awards or prizes;
- (ii) Memberships in associations that require outstanding achievements;
- (v) Original business-related contributions of major significance;
- (vi) Authorship of scholarly articles in the field;
- (viii) Leading or critical role for organizations with a distinguished reputation; and
- (ix) High salary or other significantly high remuneration.

The Director determined that the Petitioner met two of these criteria, relating to authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner contends that the Director erred in determining that he did not satisfy the criteria relating to membership and high salary. *See* 8 C.F.R. § 204.5(h)(3)(ii) and (ix). The Petitioner does not contest the Director's determination that he did not satisfy the lesser nationally or internationally recognized awards or original contributions criteria.

Upon *de novo* review of the record, we conclude that the Petitioner has met the two criteria discussed in the Director's decision. Specifically, the record includes evidence that the Petitioner authored three articles published by professional publications, and that he serves in a leading or critical role in his current U.S. position with [redacted]. In addition, the record sufficiently establishes that [redacted] has a distinguished reputation in the banking industry.

Further, we find sufficient evidence to establish that the Petitioner has commanded a high salary or other significantly high remuneration in relation to others in his field and has therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner submitted evidence of his earnings in his previous positions of "Vice President, Credit Analyst," "Director, Credit Analyst," and his current position as "Director, Head of Asset Management & Portfolio, Oil & Gas," along with comparative salary information from several sources for the occupations of "credit analyst" and "portfolio manager" in the [redacted] Texas area. The Director determined that the comparative salary surveys for "credit analyst" positions did not provide an appropriate basis for comparison because they were not for a "Vice President" or "Director" level position. The Director did not acknowledge the "portfolio manager" salary data.

The Petitioner explains that "vice president" and "director" are "corporate titles" and not indicative of the nature of an employee's work within his company. He asserts that the evidence establishes that his job function for the years 2015 to 2018 was in fact that of a credit analyst as reflected in his job titles and submitted job descriptions, and notes that he did not assume a higher level position (equivalent to a "portfolio manager") until he was promoted to his current position in July 2018. The Petitioner's assertions are persuasive, and we find sufficient evidence to establish that he has consistently commanded a high salary in relation to others in his occupation since 2015.

Because the Petitioner has established that he meets the requisite three evidentiary criteria, he has satisfied the initial evidence requirements, and we need not consider whether he meets the additional criterion (relating to memberships in associations) he addresses in his appeal brief. Rather, we will consider the evidence submitted in support of this criterion, together with the balance of the record, to determine whether he possesses the level of sustained acclaim and standing in his field to establish his eligibility as an alien of extraordinary ability.[1]

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2] In this matter, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner received a bachelor of engineering degree from the [redacted] Institute of Technology [redacted] in 2002 and later attended [redacted] University with a significant merit scholarship, where he received a Master of Business Administration (MBA) with a concentration in Finance in 2011. According to his curriculum vitae, the Petitioner worked as a software engineer, project lead, and financial IT analyst for banking and retail companies between 2002 and 2009, during which time he received two performance-related awards from one of his employers [redacted]. Since 2010, he has worked in the energy finance sector of the banking industry, initially as a credit analyst with [redacted] and since 2014, in progressive positions with [redacted] where he currently serves as Director, Head of Asset Management & Portfolio, Oil & Gas.

As mentioned above, the Petitioner provided evidence that he has authored scholarly articles, performed in a leading or critical role with his current employer, and commanded a high salary. We have also considered evidence related to his business-related contributions, his membership in a professional association, and his academic and professional awards. The record, however, does not demonstrate that his achievements have resulted in sustained national or international acclaim.

The Petitioner provided evidence that he authored two articles in *Intelligent Risk*, a quarterly journal published by Professional Risk Managers' International Association (PRMIA), and a third article published on the website of the Oil and Gas Council. Authorship and publication of scholarly articles do not automatically place one at the top of the field.[3] Here, all three articles were published between [redacted] 2019, in the six-month period preceding the filing of the petition. The Petitioner did not demonstrate that this very recent publication record is consistent with having a "career of acclaimed work" and sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Nor did he show how his publication record compares to others who are viewed to be at the very top of the field.

We note that the citation history or other evidence of the influence of the Petitioner's written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others in his field have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122.

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[3] *Id.* at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Here, the Petitioner indicated that his published articles evidence his original business contributions of major significance in the banking industry. He explained that his articles published in *Intelligent Risk* are "contributions in the field of [redacted] applicable to commercial banks," noting that he wrote with the intent of "help[ing] the banking community" to navigate new [redacted] Specifically, the Petitioner describes his [redacted] 2019 article as "a pioneering effort to break-down one of the most elaborate [redacted] into bite-size pieces so tha[t] any banking professional can develop an understanding of what lies ahead in the near term." The Petitioner indicated that he received "positive feedback" on his *Intelligent Risk* publications but did not demonstrate that this feedback was at a level consistent with national or international acclaim.

While the Petitioner submitted testimonials from banking industry professionals familiar with his *Intelligent Risk* publications, this evidence was insufficient to support his claim that his work was "pioneering" or received widespread recognition. For example, [redacted] of Regions Bank states that the Petitioner's [redacted] article was "a first attempt of its kind to illustrate the changes and highlight the impact that these [redacted] are about to cause," and notes that "any individual or team would benefit strongly from the article." [redacted] of J.P. Morgan Chase, noted that the Petitioner's article was "published in a highly reputable journal" and "demonstrated his depth of industry knowledge by identifying future trends in the banking sector." Finally, [redacted] of Bank of England noted that the Petitioner's article "looks ahead to the impact of the [redacted] set of banking reforms agreed by banking [redacted] and supervisors from the G20 group of nations." He states that the Petitioner's article was "relevant and forward looking" because the reforms "have the potential to impact banks' lending activities." These letters, however, do not demonstrate how the Petitioner's articles on banking [redacted] while relevant and potentially helpful to other industry professionals, garnered widespread commentary or a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

The Petitioner also claims that his article [redacted] published on the *Thought Leaders* platform on the website of the Oil & Gas Council, [redacted]." [redacted] Director, Energy & Natural Resources at [redacted] confirmed that the Petitioner has been "working on introducing [redacted] in the U.S." which "would benefit the energy producing companies as well as other banks alike." He noted that [redacted] has already used this financing method in one transaction, and that "once this product becomes mainstream, it will directly and indirectly lead to the creation of thousands of jobs and will contribute materially towards the energy production in the United States."

The Petitioner emphasized that he has "received accolades from people who found this article very useful." For example, he provided a letter from [redacted], a Director at Credit Agricole Corporate & Investment Bank, who states that he and his employer benefited from the Petitioner's expertise in structuring the [redacted] financial product and received internal approval to participate with [redacted] in future transactions. [redacted] also references the Petitioner's article on [redacted], praising it as "very well written." He notes that his employer "is actively working to partner with [redacted] to finance such energy [redacted] companies." [redacted] an executive director at UBS Investment Bank, states that he is aware of the Petitioner's introduction of the [redacted] product at [redacted], and notes that it "will give access to an alternative source of capital to many [redacted] energy companies" as it becomes "more

popular" and other banks adopt it. This evidence demonstrates that the Petitioner's article on [redacted] has received some attention and that other banks are seeking to partner with [redacted] on these transactions in the future. However, it also reflects that the product is still new, that it has been put to limited use by his own employer, and that it has not yet impacted the wider oil and gas banking industry. As a result, the evidence does not establish that the Petitioner's development of this financing technique has significantly influenced the field to the extent that he has garnered national or international acclaim as a result of either his published article or his employer's implementation of the product to date.

While we acknowledge that it is a significant recognition to have his work accepted by peer-reviewed professional publications the Petitioner has not shown how his three published articles place him among the small percentage at the very top of his field. Overall, beyond the solicited testimonial evidence, there is limited evidence to support a finding that the Petitioner's published work and business-related contributions have resulted in national or international acclaim.

We have also considered evidence related to his leading or critical role with [redacted] The evidence shows that the Petitioner advanced from a "Vice President, Credit Analyst" role to his current leadership role of "Director, Head of Asset Management & Portfolio, Oil and Gas" which he had held for one year as of the date of filing. [redacted] provided a letter in which he detailed the Petitioner's "significant contributions to [redacted]," noting that he "currently manages a "$5.0 billion portfolio of commitments to [redacted] clients" and has "a direct implication on [redacted] Business' success in the United States." A letter from [redacted] Managing Director – Head of Energy Structured Finance, describes the Petitioner's contributions to [redacted] in similar, highly complimentary terms. While both letters discuss the impact and results of the Petitioner's leadership within [redacted] the record does not reflect that he was hired based on his sustained national or international acclaim, or that he has garnered such acclaim outside of the organization based on his achievements and contributions to the company. While he has been recognized internally and by business colleagues for his accomplishments with [redacted] the record does not show how these successes have resulted in national or international acclaim. 8 C.F.R. § 204.5(h)(3).

For example, the Petitioner provides evidence that [redacted] was awarded a "Credit Portfolio Manager of the Year Award" from *Risk Magazine* in [redacted] 2018 and indicated that this award was won by his "team." However, the record does not establish that the awarding entity intended to recognize the Petitioner individually or the team of analysts he manages from the company's [redacted] location. Further, the letters he submitted from [redacted] and [redacted] which discuss his achievements in detail, do not mention this award or how he contributed to his company's receipt of it. An article announcing the award contains quotes from [redacted] global head of portfolio management, and barely references the bank's activities in the United States, much less the Petitioner's specific team. Therefore, even if the Petitioner had sufficiently corroborated his claim that the award is attributable to his team, there is no evidence that it resulted in any external recognition for his achievements.

The record reflects that the Petitioner's latest promotion at [redacted] likely helped him achieve his "Risk Leader" designation with the PRMIA in [redacted] 2019. According to a screenshot from the PRMIA website, "Risk Leader is a special designation reserved for risk practitioners who hold key executive positions with their firms," and who have their applications favorably reviewed by a "Risk Leader

Committee." While this elevated level of membership with PRMIA recognizes the Petitioner's senior level role with his company, the record does not establish that being recognized as a "Risk Leader" is the same as receiving industry recognition as one of the small percentage at the very top of the risk management field or that it is granted only to those with sustained national or international acclaim in this field.

The Petitioner also provided evidence that he has earned a high salary with [redacted] but has not shown that his earnings are at a level reflecting that he is one of the small percentage who has risen to the top of the field. For example, the Petitioner stated that a "portfolio manager" is an appropriate basis for comparison to his current position. The record reflects that the Petitioner had a base salary of $175-$185,000 in 2018, with a potential cash bonus of $60-70,000. His actual earnings were $236,189. He submitted a Glassdoor salary survey which indicates a "high" base salary of $174,000 for a [redacted] based portfolio manager and shows that persons in this occupation can earn up to $116,000 in "additional cash compensation." Considered with the other evidence, the Petitioner's salary appears to be consistent with his leading or critical role at [redacted] and the distinguished reputation of the company as a major international corporate investment, and financial services firm, but does not necessarily reflect recognition of the Petitioner's acclaim in the field.

As indicated above, the Petitioner provided a number of reference letters that summarized his work, achievements and contributions. The letters, however, do not contain sufficient information and explanation to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, [redacted] of Regions Bank, who states that he was previously employed by [redacted], indicates that the Petitioner is "very active in the [redacted] banking circle," "very well regarded by his peers," and "one of the top three professionals" that he has personally known in the field of '[redacted] finance." [redacted] states that he considers the Petitioner to be "a professional with exceptional abilities in the field of [redacted] Finance in general and Credit Analysis in particular." [redacted] CFO for a [redacted] company and the Petitioner's former [redacted] University classmate, states that the Petitioner "has established himself as an experienced banker with a skillset and expertise that are highly desirable in the energy industry," while [redacted] president and CFO of [redacted] states that he has "no doubt in saying that [the Petitioner] is one of the best in his field."

Although the letters recount some of the Petitioner's accomplishments from recent years, they do not explain or justify their assertions regarding his position at the top of the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Moreover, the Petitioner himself acknowledges that his most notable accomplishments are quite recent. The record reflects that his elevated membership in PRMIA, his promotion to a leadership position with [redacted], and all three of his publications occurred within the year preceding the filing of the petition. The record does not demonstrate that these recent achievements, while impressive,

demonstrate that is an individual has already garnered "sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

C. Reserved Issue

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether his entry would substantially benefit prospectively the United States, as required by section 203(b)(1)(A)(3) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.